APPEAL NO. 010254

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 16, 2001. The hearing officer found that the respondent (claimant) was entitled to supplemental income benefits (SIBs).

The appellant (carrier) appeals, pointing out that although the hearing officer's decision rules on the 17th quarter, it was, in fact, the 7th quarter entitlement that was under review. The carrier argues that its verification proved that the claimant did not make all job contacts listed on her Statement of Employment Status (TWCC-52) form. The claimant agrees that numerous clerical errors are made in the decision, but that the portion conferring entitlement to SIBs should be affirmed.

DECISION

Affirmed as reformed.

Both parties correctly point out the technical errors in the hearing officer's decision. We correct the errors by noting that it was the 7th quarter under dispute, and all references to the 17th quarter are hereby stricken and new references to the 7th quarter substituted.

The hearing officer did not err in choosing to believe the claimant's testimony about her job search and in finding that she satisfied the "good faith" requirement for SIBs. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) provides, in pertinent part, that:

> (e) Except as provided in subsection (d)(1), (2), (3), and (4) of this section, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

The claimant presented evidence that she made weekly searches and contacted over 80 prospective employers, mostly in person. She said that she believed she had the ability to perform the jobs she applied for. She was not interviewed for any jobs. The investigator for the carrier testified that when he contacted these employers, he asked only if there was an application or resume on file, and did not ask the general question as to whether the claimant had contacted the employer. There were only 19 employers who stated that they would still have an application on file after the elapsed time but who showed none for the claimant. There were a few employers who contended that the listed contact person did not or had not worked for them. A number of employers could not be contacted. There were employers who were able to verify a contact or application, and others who contended that there would be no way to verify, one way or the other, if an application had been submitted. In summary, the answers were varied.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here. We, consequently, affirm the decision and order as reformed by the clerical correction in the quarter under review.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge